Supreme Court, U.S.
FILED
APR 06 2004

No. 03-1406

In The

Supreme Court of the United States

LEE A. GRANT,

Petitioner,

vs.

SECRETARY OF VETERANS AFFAIRS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The District Of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

LEE A. GRANT
4801 6th Street, N.E.
Washington, D.C. 20017
(202) 529-4937

QUESTION PRESENTED

Did plaintiff exhaust his administrative remedies in filing his complaint against the Department of Veterans Affairs Medical Center, Washington, D.C., based on information given to plaintiff by patient's advocate?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	4
CONCLUSION	10

INDEX TO APPENDICES

APPENDIX A	App. 1
APPENDIX B	App. 3

TABLE OF AUTHORITIES

Page

CASES

Cunningham v. Litton Industries, 413 F.2d 887 (9th Cir. 1969) 2

Stebbins v. Continental Ins. Co. (D.C. Cir. 1971) 2

EEOC v. Container Corp. (M.D. Fla. 1972) 2

CONSTITUTIONS

U.S. Const. Article IV 1

U.S. Const. Article XIV, Section 1 2

STATUTES

28 U.S.C. § 1254(1) 1

OTHER AUTHORITIES

38 Code of Federal Regulations 0.735-20 sect. (d) 4

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**: The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

For the cases from **federal courts**: The date on which the United States Court of Appeals decided my case was February 4, 2004.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE IV

The right of the people to be secure in their persons houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or

affirmation and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE XIV, SECTION 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. The prerequisite to any private suit is a "Right to Sue" letter from the EEOC. *Stebbins v. Continental Ins. Co.* (D.C. Cir. 1971).

2. The EEOC must actually attempt conciliation, *EEOC v. Container Corp.* (M.D. Fla. 1972).

3. The EEOC must fail at reconciliation, *Cunningham v. Litton Industries*, 413 F.2d 887 (9th Cir. 1969).

4. Plaintiff is no longer an employee of the federal government and relies on patient's advocate rather than an EEOC counselor for guidance.

5. The attached letter is a copy of the actual letter sent to the director of the VA Medical Center D.C. per patient's advocate's advice.

10-3-02

Director
VAMC-DC.

Gentlemen:

1. I am a patient on dialysis at VAMC-DC.

2. On 10-1-02 I was being dialyzed when I was approached by Mr. Leonard Johnson who grasped my right hand.

3. I do not know Mr. Johnson and don't care to know Mr. Johnson.

4. I berated Mr. Johnson.

6. About 2 p.m. on 10-1-02, I was approached by Dr. Palant, who berated me for berating Mr. Johnson in front of several dialysis professionals.

7. Dr. Palant has no authority to question my personal or professional judgement. He was completely out of line.

8. I decide who touches me.

9. Mr. Johnson had absolutely no authority to have contact with me.

10. I demand an apology (personal) from Mr. Johnson and Dr. Palant in front of all professionals in the dialysis unit immediately.

Lee Grant
Former Sr. Veterans Claims
Examiner, VARO-D.C.

REASONS FOR GRANTING THE PETITION

1. Plaintiff did exhaust his administrative remedies.

2. Plaintiff was wronged and is seeking a remedy.

3. Defendant violated the 38 *CODE OF FEDERAL REGULATIONS* regarding service to veterans: Ch. 0.735-20, Veterans Administration, sect. (d) "dealing with the public, employees should be courteous, considerate, efficient and prompt in serving the general public, veterans and their families."

4. See attached letter dated July 4, 2003.

July 4, 2003
4801 6th Street, NE
Washington, D.C. 20017

TO WHOM IT MAY CONCERN:

I am an American Black man who was born in Vicksburg, Mississippi, June 24, 1925.

In addition to being educated at Hampton Institute (now Hampton University), Robinson Business College (Monroe, Louisiana), Washington College of Law (Washington, D.C.) and other institutions, I served honorably in the U.S. Navy during World War II as a Boatswains Mate Second Class and the U.S. Army during the Korean War as a First Lieutenant.

Having served in the two wars, I am service connected disabled at 100%.

Some of my disabilities are:

1) End Stage Renal Disease

2) Hypertension

3) Residuals of Cerebrovascular Accident

4) Aphasia and Hemiparesis

5) Post Traumatic Stress Disorder

All of those serious medical conditions were rated by the Department of Veterans Affairs.

I am currently in dialysis treatment and other care at the Veterans Administration Medical Center, Washington, D.C.

I am having problems at this hospital. This hospital is for Veterans.

Employees at this hospital, doctors and nurses (most of them Black nurses) are personally causing me great stress by violating the code of Federal Regulations regarding their relations with me.

Instead of them performing their duty to provide me with the best of care, these Black nurses are personally trying to make it as unpleasant as possible for me. The same is true where most of the Renal doctors are concerned, especially one doctor named ~~LaPlant~~. Palant.

Dr. ~~Laplant~~ Palant is White and is completely antagonistic towards me. There are approximately six or seven doctors assigned to the Renal Unit and only two have shown any interest in providing care for me.

My deepest concern is this:

Someone in the Veterans Administration Medical Center is trying to kill me. Why? How?

The reason why is because:

1) I am a Black American male.

2) I do not subscribe to the White man's theory of White Supremacy.

3) Dr. ~~Laplant~~ Palant is the Chief of the Renal Unit where plantation-type Blacks will do anything negative towards me for him because they traditionally expect favors from him and others like him.

4) With 100% service-connected disability (the money received is tax free) that's too much money for a Black man to receive.

5) Dr. ~~Laplant~~ Palant and others wants me to receive treatment somewhere else (he has tried to get me to do so personally).

6) The Renal Unit is moving soon to new quarters and indications are that when that move is made, the vote is that the move will be made without me.

How it is being done is in several ways:

1) Stress. I have had a stroke. It took me a week of hospitalization at another hospital to recover.

2) Strokes sometimes are fatal and some of my other serious medical conditions make me prone for strokes.

3) Some of the nurses, especially some of the Black nurses, are so incompetent towards me (I've complained about them) that they have become almost completely

indifferent in exercising their professional care for me.

4) Those Black nurses mentioned are a disgrace to the Black group and the nursing profession.

5) I have been (according to my medical records – I have copies) advised to seek psychiatric treatment for actions which I have a right to exercise – by two doctors.

6) The psychiatric advice is out of order and merely serves the doctors purpose of getting ones record to reflect to others that a Black is always crazy when he has a right to exercise his right.

7) I am supposed to be stuck (needles-two-stuck in my Fistula) two times by one nurse, on occasion, it has taken three nurses to stick me four times or two nurses to stick me three times in the same vein.

8) This incompetency by some nurses has to have some type of negativism impact on my veins (wear them out).

9) Two lines (tubes) are placed in the kidney machine from my body. One line leads to the machine and other line leads from the machine to complete dialysis.

10) The machine gives out a signal (loud) when something goes wrong.

11) When the signal sounds off, the nurse is supposed to come fast and make an adjustment to the machine.

12) Most of the nurses fail to do so in my case. This leaves me in suspense and scared for a great length of time (sometimes 5 minutes) because I do not know what the machine is indicating and I'm still attached to it. That causes me unnecessary stress.

13) Two of the nurses, Mr. Wayne Williams and Rene Brooks, always make what I believe, unnecessary adjustments to the machine when the machine is dialyzing perfectly. After these nurses complete their adjustments, I always began to feel very bad and get blurry eyed. No other nurses has ever made those kind of adjustments. On June 28, 2003, Mrs. Brooks made those adjustments and failed to punch the button returning the status screen on the machine to normal. I had to call technician, Mr. Jerome I. Yorkshire, for observation of the screen and he made the correct adjustment, returning the status screen to normal.

14) I believe that Mr. Williams and Mrs. Brooks hold personal animosity towards me because I have told the Veterans Medical Center-DC Director (in writing) that I do not want those two, among other nurses, to never stick me again because of their incompetency in sticking me.

15) Sticking me is painful and *all nurses* assigned to stick me should be proficient enough to stick me properly.

16) I have witnessed many nurses sticking other patients properly but failed to stick *me* properly.

17) I believe I'm being stuck improperly for personal reasons and this causes me great stress.

18) The two lines (one leading to the machine and one leading from the machine attached to my body contained my blood. Manipulation of the machine introduces certain drugs into my blood and then into my body. I'm very vulnerable at this point and fearful that I could be hurt by some nurses with animosity towards me.

19) I believe that a conspiracy exists between the doctors, nurses, and at least one clean-up person (Mr. Gregory Scott) to keep me continuously stressful, by their actions and inactions, for their own personal reasons.

20) Why should I be subjected to great stress by individuals (professional) who are supposed to render me the very best of care.

21) They are supposed to do a job *for* me and not do a job on me.

22) I believe this is their formula:

Stress plus age 78 plus several serious medical conditions, plus failure to care

for me properly, over an extended period of time, equals another stroke and then serious disability or possibly death.

23) I have done my bit – two wars. I have suffered enough.

24) Why do I have to be harassed by doctors, nurses (both incompetent), and other employees?

25) As a member of Omega Psi Phi Fraternity, I never dreamed that Blacks could be so cruel to other Blacks, especially a WW II and Korean Veteran in this day and age.

Lee A. Grant
4801 6th Street, NE
Washington, DC 20017

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LEE A. GRANT

Date: 4-6-04

APPENDIX A

United States Court of Appeals
For The District of Columbia Circuit

No. 03-5260 **September Term, 2003**
03cv00929

Lee A. Grant,
Appellant

Filed On: Feb. 4, 2004

v.

Secretary, U.S. Department
of Veterans Affairs,
Appellee

BEFORE: Sentelle, Rogers, and Garland, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance and the opposition thereto, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). An action may not be brought against the United States pursuant to the Federal Tort Claims Act ("FTCA") unless the claimant has first presented his claim to the appropriate federal agency and the claim has been denied by the agency. *See* 28 U.S.C. § 2401(b); *McNeil v. U.S.*, 708 U.S. 106, 111 (1993). Appellant argues that his informal letter of complaint to the Director of the Veterans' Administration Medical Center was sufficient to satisfy the

FTCA's administrative exhaustion requirement, and maintains that "legal technicalities" should not be used to dismiss the action of a pro se litigant. Even liberally construed, however, appellant's letter does not satisfy the requirements of Section 2401(b). To satisfy the FTCA's exhaustion requirement, an administrative claim must describe the alleged injury with sufficient particularity to allow the agency to investigate and assess the strength of the claim. *See GAF Corp. v. U.S.*, 818 F.2d 901, 919-20 (D.C. Cir. 1987). Appellant's letter did not do so. The claim must also set forth a "sum certain" of damages so that the agency may make an informed decision whether to attempt settlement negotiations. *See id.* Again, appellant's letter did not do so.

Pursuant to D.C. Circuit Rule 26, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam
/s/ D.B.S.
/s/ J.W.R.
/s/ M.B.G.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEE A. GRANT, *Pro Se* Plaintiff v. SECRETARY OF VETERANS AFFAIRS, Defendant.	C.A. No. 03-0929 (TPJ)

ORDER

Upon consideration of the defendant's motion to dismiss, it appearing to the Court that plaintiff has not yet exhausted the administrative remedies available to him as is required by 28 U.S.C. §2675(a), it is, this 29th day of August, 2003,

ORDERED, that plaintiff's case, C.A. No. 03-929, is dismissed without prejudice.

/S/
Thomas Penfield Jackson
U.S. District Judge